

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.

Petition for Rulemaking

CG Docket No. 05-231

COMMENTS OF THE NEW JERSEY DIVISION ON CIVIL RIGHTS

The New Jersey Division on Civil Rights submits the following comments in response to the request issued by the Federal Communications Commission (“Commission”) on July 21, 2005, under CG Docket No. 05-231, concerning standards for closed captioning of video programming. In that request for comments, the Commission seeks input to assist in responding to a request for rulemaking from the Telecommunications for the Deaf, Inc. (“TDI”), as well as other advocacy groups for individuals who are deaf or hard of hearing.

The Division is responsible for the enforcement of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1, et seq., and the regulations promulgated thereunder, N.J.A.C. 13:13-1.1 et seq. The LAD requires that “places of public accommodation” make reasonable accommodations for individuals with disabilities. N.J.S.A. 10:5-12f. Individuals who are deaf or hard of hearing are disabled within the meaning of the LAD. N.J.S.A. 10:5-5q and w. A cable provider is a public accommodation within the meaning of the LAD. N.J.S.A. 10:5-5l. The Division’s regulations give examples of reasonable accommodations, including “Providing auxiliary aids and services to ensure effective communication, such as: . . . open and closed captioning . . . and videotext displays or alternate effective means for decoding captions to facilitate television use by people with impaired hearing.” N.J.A.C. 13:13-4.12(a)7i. Thus, the LAD clearly requires cable

providers operating in the State of New Jersey to provide captioning for the deaf and hard of hearing.¹

While the Division has authority to enforce the LAD with regard to cable providers in New Jersey, both the deaf and hard of hearing communities and cable providers would benefit from federal standards. To that end, the Division provides these comments in the hope that the Commission will assure that the deaf and hard of hearing communities throughout the country are able to participate equally in what has become one of the nation's leading pastimes—watching television.

In paragraphs 10 to 17, the Commission seeks comments regarding non-technical quality standards for closed captions. These non-technical standards include matters such as accuracy of transcription, spelling, grammar, punctuation, placement, identification of non verbal sounds, pop-on or roll-up style, verbatim or edited for reading speed and type font. The Commission asks if it should establish standards for non-technical quality aspects of closed captioning. The Division recognizes the need to provide private industry with the flexibility to utilize varied methods to provide services to the public. Nonetheless, there should be a minimum benchmark that all closed captioning must meet. While problems with these non-technical matters may appear to be a simple nuisance, it must be recognized that closed captioning is the only method by which members of the deaf and hard of hearing communities can understand what is happening on the television screen. Indeed, errors in closed captioning are no different to these communities than errors in transmission of sound is to the hearing community. There should be a minimum standard which providers must meet.

¹ To the extent the Commission does not require cable providers to provide such captioning, the Division reserves the right to prosecute any Complaint before the Division that asserts a failure to provide captioning.

As for the difference between live and pre-produced programs, it is unclear why there would ever be an error in the captioning for pre-produced programs. While there could be an understandable lag or higher error rate for live television, when there is sufficient time to create and review the captioning before transmission, there should be no error. Therefore, the Division recommends that much higher standards be set for closed captioning provided for pre-produced programs.

In paragraph 16, the Commission seeks comments regarding responsibility for captioning. It would appear that many distributors disclaim responsibility for the quality of captioning. To the extent the captioning for a program is not properly provided, the Division agrees with TDI that the program should not be included in the tally for meeting the captioning requirements. The Commission should not allow poor or incorrect captions to be counted as captioned program. Again, the purpose of captioning is to permit individuals with hearing loss to participate in one of our nation's most popular social activities. If the captioning provided is "full of errors," it does not meet the needs of these individuals. Such captioning is no better than no captioning, and should not be counted towards meeting captioning requirements.

In paragraph 19, the Commission notes the National Cable Trade Association's ("NCTA") statement that there is no evidence that the "pass through" rule (which requires video programming providers to allow captioning to "pass through" when such captioning is already embedded in product received by the video programming provider) is being ignored or that the technical quality issues mentioned relate at all to this rule. Accordingly, NCTA asserts that it is unnecessary for the Commission to impose technical quality standards. Since NCTA's position presumes that there is no problem, NCTA should not oppose the imposition of a penalty structure if technical problems do in fact occur. The Division disagrees that compliance can be assumed and therefore recommends that the Commission establish a

penalty structure for any violations of the “pass through” requirement. Such penalty would be imposed only when the video programming provider fails to pass through captioning it receives and the captions do not need to be reformatted. If the captioning is available, it must be provided, and failure to do so should be met with a graduated penalty structure, whereby the fine increases as the number of violations increase.

In paragraph 25, the Commission seeks comment as to whether video programming distributors should have specific mechanisms in place for monitoring and maintenance of their equipment and signal transmissions. Again, the Division does not favor a specific mechanism—the methodology should be left to the individual video programming distributors. The video programming distributor, however, should be required to meet specific performance benchmarks. How the video programming distributor meets that benchmark is irrelevant. If the video programming distributor does not meet minimum performance standards, however, there should be repercussions. Thus, the Division recommends that the Commission establish minimum technical standards, permitting each private entity to meet those minimum standards by whatever means works best for it, with an understanding that failure to meet such standard will have definite and meaningful repercussions.

Paragraphs 26 to 35 concern regulations regarding complaint procedures. In its petition, TDI seeks to require video programming distributors to post complete contact information on their internet websites and to provide such information to the Commission. The NCTA opposes such a requirement, as this information is available in bills mailed to customers and cable operators have customer service representatives who can assist customers in resolving complaints. The Commission also seeks comments as to whether customers should be permitted to file complaints directly with the Commission.

It has been the Division's experience that members of the deaf and hard of hearing communities are increasingly utilizing the internet for effective communication. Therefore, it is logical to provide information to these communities on the video programming distributors' websites. As the nation becomes more technically advanced, it simply makes good sense to have such information on a website. Coupled with the unique needs of the deaf and hard of hearing communities, this requirement is reasonable, and does not unduly burden the cable provider. Indeed, having customer service representatives available is not an option to persons who cannot use a telephone; the internet is.

A standard complaint also makes good sense. It simplifies the process, not only for the customer, but for the video programming distributor as well. The customer knows where to find the form and can complete it without unnecessary questions. The video programming distributor can be assured that the form it is providing will be sufficient to address the needs of the communities. Finally, the Division believes it makes sense to permit customers to file directly with the Commission. Because of the multitude of video programming distributors, as well as the varied sources of video programming, it can be confusing to a consumer to know with which entity he or she should file a complaint. For example, if a program on NBC is not captioned, the consumer may not know to file a complaint with its cable provider or with NBC. Filing directly with the Commission will allow the consumer to have this significant problem addressed immediately without the customer being forced to seek out the appropriate party. The important thing is that the issue is addressed and resolved, without the complication of identifying the appropriate party. The Commission is best suited for this job.

The Division files the above comments to stress the importance of captioning to the deaf and hard of hearing communities. Indeed, the Division has recognized the importance of captioning by specifically identifying it as a reasonable accommodation in the Division's regulations. Without captioning, members of the deaf and hard of hearing community cannot

enjoy video programming. Simply, without captioning these communities are marginalized. This is the very curse of discrimination which the Division seeks to eliminate. The Commission should take reasonable steps to assure that the needs of the deaf and hard of hearing communities are met. That includes setting minimum standards and definite penalties for failing to meet those standards. It also includes providing the deaf and hard of hearing communities with an easy and accessible complaint process when captioning is not properly provided.

Respectfully submitted,

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Director